REMARKS

Favorable reconsideration of this application is respectfully requested in view of the following remarks. Claims 31-46 have been amended. Currently, claims 1-46 are pending in the present application of which claims 1, 9, 16, 24, 31, and 39 are independent.

Claims 1, 2, 9-11, 14-17, 24-26, 29-32, 39, and 40 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Berruto (EP 627827) in view of Shiobara (U.S. Patent Number 5,535,214) and further in view of Holden (U.S. Patent Number 6,134,218). Claims 3-8, 12, 13, 18-23, 27, 28, 33-38, and 41-46 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Berruto in view of Shiobara and further in view of Holden. The above rejections are respectfully traversed for at least the reasons set forth below.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claim 1, 2, 9-11, 14-17, 24-26, 29-32, 39, and 40 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Berruto in view of Shiobara and further in view of Holden. This rejection is respectfully traversed because Berruto, Shiobara, and Holden, considered singly or in combination, fail to teach or suggest the claimed invention as set forth in claims 1, 9, 16, 24, 39, and their dependents.

Claims 1, 9, 16, 24, and 39 recite, determining a transmission deadline of each of said packets of data and determining a data rate for transmission of the packets of data in the queue. The office action alleges that these elements are shown by Berruto at paragraphs 23 and 32 and at paragraphs 12, 20, 23, and 32, respectively. However, the Applicants submit that Berruto fails to show these elements. Berruto, at these paragraphs, describes situations wherein the rate and protection requirements of different streams of information are determined. These requirements have nothing to do with determining a transmission deadline. These streams of information are separated in different channels and are not in packets. Because this information is not packetized, this information is not and could not be assigned a transmission deadline or individually assigned transmission rates in a queue. The Office Action alleges that even though Berruto does not expressly disclose packet communications, it is applicable to packet communications.

Therefore, Berruto fails to show at least these two elements of claims 1, 9, 16, and 24. Holden fails to make up for this deficiency in Berruto as Holden was only referenced by the office action for allegedly disclosing the arranging of packets of data in a queue.

In addition, Berruto does not, expressly or implicitly, show determining a transmission deadline and cannot do so because the information to be transmitted is not in packets. The office action alleges that Shiobara determines a transmission deadline of packets and can therefore be combined with Berruto. However, because Berruto does not disclose the use of packet communications, it was have to be modified unduly and could not therefore operate as it was intended.

At least by virtue of Berruto's, Shiobara's, and Holden's failure to teach or suggest the above identified elements of claims 1, 9, 16, 24, and 39, and the modification of Berruto in light of Shiobara would produce an inoperable system, a *prima facie* case of obviousness has not been established under 35 U.S.C. § 103. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 1, 9, 16, 24, and 39. Claims 2-8 depend from allowable claim 1, claims 10-15 depend from allowable claim 9, claims 17-23 depend from allowable claim 16, and claims 25-30 depend from allowable claim 24, claims 40-46 depend from allowable claim 39 and are also allowable over Berruto in view of Shiobara and futher in view of Holden at least by virtue of their dependencies.

Claims 3-8, 12, 13, 18-23, 27, 28, 33-38, and 41-46 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Berruto in view of Shiobara and further in view of Holden. The Applicants submit that claims 1, 9, 16, 24, and 39 are not obvious over Berruto in

view of Shiobara and further in view of Holden. In addition, the Official Action does not rely upon Holden to make up for the deficiencies in Berruto and Shiobara with respect to claims 1, 9, 16, 24, and 39. Therefore, claims 3-8, 12, 13, 18-23, 27, 28, 33-38, and 41-46 which depend upon these claims are allowable at least by virtue of their dependencies. The Examiner is therefore respectfully requested to withdraw the rejection of claims 3-8, 12, 13, 18-23, 27, 28, 33-38, and 41-46.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 17-0026 and please credit any excess fees to such Deposit Account.

Respectfully submitted,

Dated: 11/14/08

By: _____
Darrell Scott Juneau
Attorney for Applicants
Registration No. 39,243

QUALCOMM Incorporated
5775 Morehouse Drive
San Diego, California 92121
Telephone: (858) 658-2491